IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2353 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RITABEN ALIAS VANITABEN WIDOW OF DIPAKBHAI HARIRAM
Versus
AHMEDABAD MUNICIPAL TRANSPORT SERVICE

Appearance:
MR KM SATWANI for appellants.
MR KF DALAL for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA
Date of decision: 17/04/98

ORAL JUDGEMENT (Per J.N. Bhatt, J.):
The question which has come up for consideration in short in this appeal under Section 110-D of the Motor Vehicles Act, 1939 (old MV Act) challenging the legality and validity of the judgment and award recorded in Motor Accident Claim Petition No.70 of 1985, decided by Motor Accident Claims Tribunal -I (Main), Ahmedabad, which is a

part of a composite judgment rendered in MACP No. 12/85 and MACP No.70 of 1985.

A few material facts giving rise to this appeal may, shortly, be articulated so as to appreciate the merits of the appeal and challenge against it.

A road accident which occurred, on 11.12.1984, at about 10.30 P.M. took toll of the rider of the scoter, deceased Deepak Hariram. The appellants are the original claimants and respondents are the original opponents of the said claim petition. Two claim petitions came to be filed. Motor Accident Claim Petition No. 70 of 1985 came to be filed by the widow of the deceased for herself and as guardian of minor daughter of the deceased, whereas, MACP No. 12 of 1985 came to be filed by the parents of the deceased. The Tribunal decided both the claim petitions by a common judgment, whereby, the appellants/original opponents came to be directed to pay an amount of Rs.38,440 in MACP No.12/85 and an amount of Rs.97,840 in MACP No. 70 of 1985 by way of compensation for the, untimely, demise of deceased Deepak. Thus, the Tribunal awarded a total amount of Rs.1,36,280 by way of compensation. The present appeal is directed against the judgment and award recorded in MACP No.70 of 1985, whereby, the respondents have been directed to pay an amount of Rs.97,840. The Tribunal has also directed to pay interest at the rate of 9% per annum from the date of the application till payment.

The short question which falls for our consideration in this appeal, is as to whether the amount of compensation awarded to the appellants who are the widow and minor daughter of deceased Deepak, who also died during the pendency of the appeal, is just and reasonable or not. The contention of the appellants is that the Tribunal should have awarded at least an amount of Rs.1,00,000 more towards the compensation.

Needless to say that the amount of compensation in a case of tortious liability arising out of a road accident under the Motor Vehicles Act has to be decided in the light of two recognized heads i.e., (i) loss of dependency benefits and (ii) loss to the estate and loss of expectation of life, in case of fatal injury like one of hand. The Tribunal has dealt with this aspect in paragraphs 14, 15 and 16 of the impugned composite judgment. The Tribunal found that the income of the deceased at the relevant time would not be, in any case, more than Rs.1000. However, the Tribunal has reduced it to Rs.700 per month on account of imponderables and

uncertainties in life. The Tribunal also took the net income of the deceased at Rs.700 per month and considering nine units in the family, deducted an amount of Rs.178 towards the personal expenses of the deceased. Therefore, an amount of Rs.522/- was accepted as the loss of dependency value per month and the annual loss of dependency, therefore, came to be Rs.522 x 12 = 6264 which came to be multiplied by 20. Therefore, a total amount of Rs.1,25,280 under the head of dependency benefit came to be awarded. The conventional amount of RS.10,000 came to be awarded by the Tribunal under the head of loss of expectation of life. The Tribunal observed that this amount should be paid to the widow of the deceased, who is appellant No.1 herein. An amount of Rs.1000 came to be awarded for funeral expenses which has been directed to be paid to the father of the deceased.

It could very well be seen from the aforesaid facts that the Tribunal, unfortunately, has committed three serious errors:

(i) deduction of an amount of Rs.300 out of the income of Rs.1000 per month assessed by he Tribunal on account of imponderables and uncertainties in life and again finding that there were nine units, deducted an amount of RS.178 towards the expenditure of the deceased;

(ii) acceptance of multiplier of 20;

(iii) totally discarding the income from the partnership firm in the name of Vishwakarma Plywood Centre in which deceased was, admittedly, a partner and had 20% share but the Tribunal erred in holding that the deceased was a sleeping partner and his name was inducted for the purpose of adjustment for income tax purposes.

It is a settled proposition of that the main anxiety of the Tribunal in such case should be to see that the heirs and legal representatives of the deceased are placed, as far as possible, in the same financial position, as they would have been, had there been no accident. It is, therefore, an action based on the doctrine of compensation. It is an award in terms of money, as otherwise the human life or loss of limb are invaluable and no amount of money can compensate or substitute. Though the Tribunal has considered and assessed compensation under both the recognized heads in this case of fatal injury but has committed serious error in reaching to the conclusion that the consolidated amount

of compensation of Rs.1,36,280 is just and proper. The factors which are considered for determining the net loss of annual utility of the deceased to the common family funds and the adopting of 20 multipliers, are not reflecting the just and reasonable amount of compensation in the light of the facts of the present case as envisaged by the provisions of Section 110 of the old Act (Section 166 of the New Act).

It may also be mentioned that perfect determination of compensation in such tortious liability is, hardly, obtainable. However, the Tribunal is required to take an overall view of the facts and the relevant circumstances together with the relevant proposition of law and is obliged to award an amount of compensation which is just and reasonable in the circumstances of the case. We have no hesitation in finding that the exercise done by he Tribunal in this connection while determining consolidated amount of compensation is faulty, if not futile. Therefore, we are obliged to interfere with the impugned judgment and award. The amount of compensation awarded by the Tribunal is, grossly, inadequate and on a lower side. It must be placed on record that the reasoning assigned by the Tribunal in not considering the profit income as a partner in the said firm is neither logical nor legal. The status of a sleeping partner, even if it is presumed to be so, would not have any material bearing in so far as the share in the profit fixed as per contract is concerned. At the best the managerial power of a partner or the extent of contribution in the management of the partnership firm in the case of a sleeping partner may be less or insignificant but it has nothing to do with the earnings and profit which is, contractually, sharable and available to a partner in whatever status or capacity he is. Be it as it may. Again, the conclusion and the finding by the Tribunal that the deceased was a sleeping partner and his name was added in the partnership firm only for the purpose of income tax purpose, is, unwarranted, without there being any material on record. Notwithstanding that even if we exclude the profit available and payable to the deceased out of the said partnership firm being a partner having 20% share, the datum figure worked out by the Tribunal is unrealistic for the simple reason that it does not include the prospective earnings.

It is a settled proposition of law that with a view to award a just and reasonable amount of compensation in a case of fatal injury, it is incumbent upon the Tribunal to consider as to what was the income at the relevant

time of the accident and what would have been or probable prospective earnings in the later years of the life. The amount of income prevalent at the relevant time, in absence of any other evidence, is required to be doubled and then divided by half so as to reflect the prospective average income for the purpose of determining the datum figure. It is an admitted fact that the Tribunal has, totally, lost sight of the material point of considering prospective earnings of the deceased. This proposition of law is very well settled and, extensively, explored by catena of judicial pronouncements and it would not detain us any longer on this aspect.

After having taken into consideration the relevant factual scenario emerging from the facts of the present case and having heard learned advocates appearing for the parties, even in absence of any other evidence, an able-bodied young man of 25 years otherwise also presumed to earn an amount of Rs.1000 or more per month. On that basis the prospective income could be calculated by doubling the one prevalent on the date of the accident, which is required to be divided by half, so as to reach the correct datum figure which is required to be multiplied by appropriate multiplier. Even taking a conservative view in the matter, the deceased would be earning not less than an amount of Rs.1000 per month and considering the prospective average income of Rs.2000 and divided by half, would, obviously, come to Rs.1500. Even though there were nine units in the family, an amount of Rs.500 could be deducted for the expenditure of the deceased himself for his personal upkeep. Thus, his net contribution to the common family fund, in any case, would not be less than Rs.1000 per month. In other words, the annual utility to the common family fund would be Rs.12000. The Tribunal has, unfortunately, adopted multiplier of 20. In our opinion, multiplier of 20 is on higher side and in view of the celebrated decisions on this score, it would be just and reasonable to adopt in the present case the multiplier of 16. Therefore, the claimants shall be entitled to an amount of Rs.12,000 x 16 = Rs.1,92,000. Therefore, we have no hesitation in finding that the claimants are entitled to an amount of Rs.1,92,000 under the head of loss of dependency value. Obviously, the claimants would be entitled to the then conventional amount of Rs.10,000 under the head of loss of expectation of life. The claimants also shall be entitled to an amount of Rs.3,000 for funeral expenses. In the result, the claimants shall be entitled to, in aggregate, an amount of Rs.2,05,000. The consolidated sum of Rs.1,36,280 awarded by the Tribunal in both the claim petitions filed by the widow and minor on one hand

and the parents of the deceased on the other, is required to be deducted so as to reach the additional amount of compensation to which the claimant will be entitled to. Consequently, the claimant shall be entitled to Rs.68,720 (Rs.2,05,000 minus Rs.1,36,280 = Rs.68,720) by way of additional amount of compensation, which is required to be rounded off to Rs.70,000. Accordingly, the claimant shall be entitled to, in aggregate, an additional amount of Rs.70,000 against the additional claim of Rs.1,00,000 in the present appeal, with interest at the rate of 12% per annum from the date of the application till the date of payment with proportionate costs.

No other contention has been raised.

In the result, the appeal is partly allowed. The impugned judgment and award shall stand modified to the aforesaid extent, with cost. The respondents, who are the original opponents and tort-feasors, are directed to deposit the additional amount of compensation awarded by us with interest amount and cost within a period of six weeks from today.

Before parting we are obliged to observe that the claimant is the widow of the deceased. To protect her interest and in the larger interest of justice, in so far as the disbursement part is concerned, the Tribunal is directed to disburse only 20% of the amount of additional amount with cost and interest, by an account payee cheque in the name of the claimant and remaining 80% of the additional amount of award with interest and cost shall be invested in Fixed Deposit Receipt of any nationalized bank or any Government undertaking or Corporation, wherein, the rate of interest is higher than the bank, initially, for a period not less than five years and the amount of interest which shall accrue thereon, periodically, shall be paid to the appellant/ original claimant - widow of the deceased. The claimant shall not be entitled to create any charge or incumbrance or deal with the said Fixed Deposit Receipt, in any manner whatsoever, without prior approval of the Tribunal. Such an endorsement shall be made on the Fixed Deposit Receipt and, correspondingly, in the concerned ledger of the bank or institution, as the case may be, with red ink.